judgment debtor can attend before the Court to state his objection to the garnishee order *nisi* being made absolute. In this case the Garnishee Order To Show Cause was not served on the judgment debtor.

In any case the Court can hear the judgment debtor's application under its inherent powers and make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court (Order 92 Rule 4).

Counsel for the judgment debtor submits that a salary or other periodic payment of a similar nature is only attachable when it becomes a debt but not before and cites as his authorities paragraph 531 of Vol. 17 *Halsbury's* Laws of England 4th edn. at page 330 and the cases of *Jones* v. *Thompson*[1], *Hall* v. *Pritchett*[2] and *Mapleson* v. *Sears*.[3]

The headnotes of *Hall* v. *Pritchett* reads:

"The salary of a medical or other officer cannot, before it is actually payable, be attached by a garnishee order under the County Court Rules, 1875, for it is not 'a debt, owing or accruing' to the judgment debtor.
Jones v. *Thompson* followed."

Counsel for the judgment creditor seeks to distinguish the cases cited by the counsel for the judgment debtor stating that those cases are all cases of Writ of Seizure and Sale and not applicable to garnishee proceedings.

In my view the submission of counsel for the judgment debtor is correct.

There is no dispute that the judgment debtor's October salary was not due until October 31, 1985. So at the date of the Garnishee Order Absolute, October 4, 1985, there was no attachable debt. Even an existing right under which something is accrued which will probably become a debt at some future date is not sufficient notwithstanding that the amount to become due is capable of being calculated with precision (17 *Halsbury's* paragraph 527).

Counsel for the judgment creditor argues that the relevant date is the service of the Garnishee Order To Show Cause, as on that date the Court considered that there was an attachable debt and that the Garnishee Order Absolute is really irrelevant as it merely confirms the existence of an attachable debt. He submits that under Order 49 rule 3(2) the garnishee order *nisi* "shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be specified." He says that as the order *nisi* was made in September the debt to be attached must be the September salary and that is supported by the affidavit filed in support of the application for the order *nisi*.

The argument of counsel for the judgment creditor is untenable. The Garnishee Order To Show Cause does not specify that the judgment debtor's September salary is in the meantime attached. The Garnishee Order Absolute clearly attaches the October salary of the judgment debtor. Before the Assistant Registrar on October 4, 1985, it was the judgment creditor who asked for the attachment of $967.70, the net salary of the judgment debtor for the month of October and not September, and the Assistant Registrar made the order.

The appeal is allowed with costs and the Garnishee Order To Show Cause and the Garnishee Order Absolute are set aside.

Appeal allowed.

Solicitors: *Lee & Lee; S. Bala & Associates.*

POLYGRAM RECORDS SDN. BHD. & ORS. v. PHUA TAI ENG

[O.C.J. (Thean J.) December 6, 1985]

[Singapore – Suit No. 2605 of 1984]

Contempt of Court – Injunction – Failure to comply with Order – Pirated copies of sound tapes – Standard of proof.

Copyright – Pirated copies of sound tapes seized – Copyright of recordings of songs – Whether sound tapes copies or substantial copies of recordings – U.K. Copyright Act, 1911, ss. 5(1), 19(1).

This is an application by the plaintiffs for an order of committal against the defendant for contempt of court for failing to comply with an Order dated April 26, 1984 ("the Order"). The Order was an injunction restraining the defendant from infringing the plaintiffs' copyright of recordings of certain songs and to place into custody of the plaintiffs' solicitors all pirated copies of those recordings. By an order made on January 11, 1985 the interim injunction was continued until the trial of the action or until further order. The plaintiffs alleged that the defendant had breached the Order by offering for sale and selling

pirated copies of the plaintiffs' recordings on four occasions, *viz.*, on June 6, 1984, November 12, 1984, January 22, 1985 and March 29, 1985.

Held: (1) no evidence has been adduced to show that these alleged offending sound tapes are copies or substantial copies of the fourth plaintiff's recordings of the relevant songs;

(2) in contempt proceedings, the standard of proof is one beyond reasonable doubt. The plaintiffs have failed to establish that the defendant had committed a breach of the terms of the Order.

Case referred to:
(1) *Re Bramblevale Ltd.* [1970] Ch. 128.

CIVIL SUIT.

Pauline Teresa O'Connor (Miss) for the plaintiffs.
Vinogopal Ramayah for the defendant.

Cur. Adv. Vult.

Thean J.: This is an application by the plaintiffs for an order of committal against the defendant for contempt of Court for failing to comply with the Order dated April 26, 1984 ("the Order"). The terms of the Order, insofar as relevant to the present proceedings, are as follows:

"1. The Defendant, PHUA TAI ENG, TRADING AS PHUA T.V. SERVICE (whether by himself or by his servants or agents or any of them or otherwise howsoever) be restrained, and an Injunction be granted restraining them until after the hearing of a Notice of Motion returnable on May 11, 1984. From doing or authorising the doing of the following acts or any of them, that is to say:

(a) making, manufacturing, reproducing, selling, distributing, importing for sale, offering for sale, or otherwise parting with possession power custody or control of or destroying or defacing or hiding or removing any of the following, namely,

(i) any copies or any substantial copies (whether in the form of cassette tapes or otherwise) of any gramophone record and/or sound tape including any of the gramophone records and/or sound tapes listed in Schedule A hereto attached in which copyright subsists in Singapore and is vested in the Plaintiffs or any one of them not being a copy made by or on behalf of or with the consent of the Plaintiffs or any one of them (hereinafter called the "pirated copy or copies");

6. The Defendant do within three (3) days place into the custody of the Plaintiffs' Solicitors or to their order all pirated copies as herein defined which may come into their possession after service of this Order upon them."

By an order made on January 11, 1985 the interim injunction contained in paragraph (1) of the Order was continued until the trial of the action or until further order.

The plaintiffs alleged that the defendant had committed breaches of the terms of the Order. The breaches complained of are the following:

(a) On June 6, 1984, the defendant offered for sale, *inter alia,* 100 cassettes of sound tape (brief particulars of which appear in exhibit "GJC 4") each of which is said to contain a song listed in Schedule A (attached to the Order). These cassettes together with others were seized by the police at a raid at the defendant's premises conducted on that day pursuant to a search warrant.

(b) On November 12, 1984, the defendant again offered for sale, *inter alia,* 11 cassettes of sound tape (brief particulars of which appear in exhibit "GJC 7") each of which is said to contain a song listed in Schedule A. These cassettes together with others were seized by the police at another raid at the defendant's premises conducted on that day pursuant to another search warrant.

(c) On January 22, 1985, the defendant offered for sale, *inter alia,* 46 cassettes of sound tape (brief particulars of which appear in exhibit "GJC 11"), each of which is said to contain a song, the copyright of which is vested in one of plaintiffs and is alleged to be a pirated copy within the meaning of the terms of the Order. These cassettes together with others were again seized by the police at a raid on the defendant's premises conducted on that day pursuant to a search warrant.

(d) On March 29, 1985, the defendant sold to one Serena Dua, 3 cassettes of sound tape, namely, SM 8890 (N195 STEREO), E-37 STEREO and STEREO 3312 (S4118 STEREO), each of which is said to contain a song the copyright of which is vested in one of the plaintiffs and these cassettes are alleged to be pirated copies within the meaning of the terms of the Order.

In support of the application, multiple affidavits were filed on behalf of the plaintiffs. However, there appears to be some confusion as to the matters relied upon by the plaintiffs. Giouw Jui Chian, the Regional Anti-Piracy Co-ordinator of IFPI (South East Asia) Ltd., in his affidavit affirmed on April 10, 1985 set out in exhibits "GJC 4" and "GJC 7" 136 cassettes of sound tape which according to him contain songs listed in Schedule A, and in exhibits "GJC 11" and "GJC 13" he set out a list of songs and alleged that the copyright in these songs subsists in Singapore and

the third and fourth plaintiffs are owners of the copyright of the songs set out against their respective names in the two exhibits. Joe Chen, the managing director of the third plaintiff, in his affidavit affirmed on April 11, 1985, and Wee Tiong Wah, the managing director of the fourth plaintiff, in his affidavit affirmed on April 11, 1985, each sought to verify the claim made by Giouw Jui Chian. Such a claim, apart from the total lack of evidence in support thereof, is wholly irrelevant. What the plaintiffs are claiming in this action is copyright of recordings of the relevant songs and not copyright of the songs themselves; copyright of a recording of a song is not the same thing as copyright of a song. The plaintffs' claim is founded on section 19(1) read with section 5(1) of the Copyright Act, 1911 of the United Kingdom, which is part of the law of Singapore. Insofar as the Order is concerned only pirated copy or copies come within the prohibition, and pirated copy or copies are copies or substantial copies of any gramophone records and/or sound tapes in which copyright subsists and is vested in the plaintiffs or any of them, not being a copy or copies made by or on behalf of or with the consent of any one of the plaintiffs.

So, in order to succeed in this application, the plaintiffs must establish: first, that one of them is the owner of the copyright of a recording or recordings of the relevant song or songs, and secondly, that at least on one of the four occasions mentioned, namely: June 6, 1984, November 12, 1984, January 22, 1985 and March 29, 1985, the defendant had offered for sale or sold pirated copies of the recordings. On the first point, Wee Tiong Wah on behalf of the fourth plaintiff in his affidavits affirmed on June 19 and October 28, 1985, deposed to the following:

(a) that the fourth plaintiff paid for the cost of the recordings of the songs listed in exhibits "GJC 11" and "GJC 13" in Taiwan and is the owner of the master tape containing, *inter alia*, such recordings;

(b) that the master tape was brought to Singapore and cassette tapes containing these songs were manufactured and sold in Singapore; and

(c) that on the basis of these facts, the fourth plaintiff is the owner of the copyright of the recordings of the songs.

Even if I accept that the fourth plaintiff is the owner of the copyright of the recordings of the songs listed in exhibits "GJC 11" and "GJC 13" as deposed to by Wee Tiong Wah, there is still the second hurdle which the plaintiffs have to clear, which regrettably on the material before me they have not succeeded. All that have been produced are statements in the affidavit of Giouw Jui Chian to the effect that the cassettes of sound tape seized on the three occasions of June 6, 1984. November 12, 1984 and January 22, 1985 and the three cassettes of sound tape purchased by Serena Dua on March 29, 1985 contain, *inter alia,* songs listed in the exhibits. No evidence has been adduced to show that these alleged offending sound tapes are copies or substantial copies of the fourth plaintiff's recordings of the relevant songs.

It is settled law that in contempt proceedings, the standard of proof is one beyond reasonable doubt. In *Re Bramblevale Ltd.*[1] Lord Denning M.R. said, at p. 137:

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt".

The plaintiffs have failed to establish that the defendant had committed a breach of the terms of the Order. In the result, I dismiss the application with costs.

Application dismissed.

Solicitors: *Drew & Napier; Wee Ramayah & Partners.*

ATTORNEY-GENERAL v. FRED ZIMMERMAN & ORS.

[O.C.J. (Sinnathuray J.) December 10, 1985]

[Singapore – Originating Motion No. 86 of 1985]

Contempt of Court – Publication of article in Asian Wall Street Journal – Offensive political article – Whether contempt of court.

Jurisdiction – Contempt of court – Persons not cited in proceedings filed affidavits claiming responsibility for offensive political article – Whether court can commit of its own motion – R.S.C. 1970, O.52 r.4.

Newspaper – Offensive political article – Publication of – Whether contempt of court.